



Honorable August B. Landis  
United States Bankruptcy Judge



Entered on Docket  
June 16, 2016

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No. 15-14956-abl
MARC JOHN RANDAZZA,	)	Chapter 11
Debtor.	)	
_____	)	
LIBERTY MEDIA HOLDINGS, LLC, et al.,	)	Adv. Proc. No. 15-01193-abl
Plaintiffs,	)	
vs.	)	
MARC JOHN RANDAZZA,	)	
Defendant.	)	Hearing Date: June 10, 2016
_____	)	Hearing Time: 10:00 a.m.

**ORDER ON MOTION TO DISMISS**

On June 10, 2016, the Court issued its oral ruling on a contested Motion to Dismiss, Or In the Alternative, For Partial Summary Judgment (“Motion”) (ECF No. 19).<sup>1</sup> The Motion was filed on behalf of defendant Marc John Randazza (“Defendant”). The Motion seeks dismissal of the complaint<sup>2</sup> filed in the adversary proceeding captioned above.

<sup>1</sup>In this Order, unless otherwise specified all references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned adversary proceeding as they appear on the docket maintained by the Clerk of the Court.

<sup>2</sup>ECF No. 1; as amended, ECF No. 11 (collectively, the “Complaint”).

1 At the June 10, 2016, oral ruling, attorney Matthew C. Zirzow appeared on behalf of  
2 Defendant. Attorney James D. Greene appeared telephonically on behalf of plaintiffs Liberty  
3 Media Holdings, LLC and Excelsior Media Corp. (collectively, "Plaintiffs"). Attorney Timothy  
4 R. Wheeler appeared telephonically on behalf of Bank of America, N.A.

5 To the extent that the Court made findings of fact and conclusions of law in the course  
6 of its oral ruling on June 10, 2016, those findings of fact and conclusions of law are  
7 incorporated into this Order by this reference pursuant to FED. R. CIV. P. 52(a)(1), made  
8 applicable in this contested matter pursuant to FED. R. BANKR. P. 9014(a) and (c) and 7052.

9 For the reasons stated on the record:

10 **IT IS HEREBY ORDERED** that the Motion is **GRANTED in part and DENIED in**  
11 **part as follows:**

- 12 • To the extent the Motion seeks dismissal of the non-enumerated request  
13 for relief set forth in the prayer of the Complaint ("Prayer"),<sup>3</sup> for relief in  
14 the form of a jury trial, the Motion is **GRANTED**.
- 15 • To the extent the Motion seeks dismissal of the non-enumerated request  
16 for relief set forth in the Prayer of the Complaint for disgorgement of  
17 monies paid by Plaintiffs to Defendant, the Motion is **GRANTED to the**  
18 **extent** Plaintiffs seek disgorgement as a separate remedy via only the  
19 Prayer.
- 20 • To the extent the Motion seeks dismissal of the non-enumerated request  
21 for relief set forth in the Prayer of the Complaint for attorney fees and  
22 costs, the Motion is **GRANTED only to the extent** Plaintiffs seek  
23 attorney fees and costs incurred in their pursuit of this instant adversary  
24 proceeding.

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26 <sup>3</sup>See ECF No. 11 at pp. 20-21 of 21.

- 1 • To the extent the Motion seeks dismissal of the non-enumerated request  
2 for relief set forth in the Prayer of the Complaint for attorney fees and  
3 costs incurred prior to commencement of Defendant's bankruptcy case<sup>4</sup>  
4 as part of Plaintiffs' claims for nondischargeable monetary damages, the  
5 Motion is **DENIED**, as the Court finds Plaintiffs' claims for  
6 nondischargeable monetary damages appropriate under Wilshire  
7 Boulevard.<sup>5</sup>
- 8 • To the extent the Motion seeks dismissal of Claim for Relief 1 from the  
9 Complaint, the Motion is **GRANTED**.
- 10 • To the extent the Motion seeks dismissal of Claim for Relief 2 from the  
11 Complaint, the Motion is **GRANTED**.
- 12 • To the extent the Motion seeks dismissal of Claim for Relief 3 from the  
13 Complaint, the Motion is **GRANTED**.

14 **IT IS FURTHER ORDERED** that all other relief requested in the Motion is **DENIED**.

15 **IT IS FURTHER ORDERED** that, to the extent this Order dismisses the non-  
16 enumerated requests for relief contained in the Prayer of the Complaint,<sup>6</sup> such dismissal is **with**  
17 **prejudice**, as the Court finds that amendment of those requests for relief would be futile.

18 **IT IS FURTHER ORDERED** that, to the extent this Order dismisses enumerated  
19 Claims for Relief 1, 2, and 3 of the Complaint, such dismissal is **without prejudice**.

20 **IT IS FURTHER ORDERED** that Plaintiffs shall have **21 days from the date of**  
21 **entry of this Order on the Court's docket** to file an amended complaint alleging sufficient  
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23 <sup>4</sup>Voluntary chapter 11 petition for relief filed in the United States Bankruptcy Court for  
24 the District of Nevada on August 28, 2015, as Case No. 15-14956-abl (the "Main Case"). See  
Main Case ECF No. 1.

25 <sup>5</sup>The 3250 Wilshire Boulevard Bldg. v. W.R. Grace & Co., 990 F.2d 487 (9th Cir. 1993).

26 <sup>6</sup>See 2:12-24 of this Order.

1 facts to make out prima facie dischargeability objections under 11 U.S.C. §§ 523(a)(2)(A),  
2 (a)(4), and/or (a)(6).

3 **IT IS FURTHER ORDERED** that, in the event Plaintiffs fail to file an amended  
4 complaint within the time set forth in this Order, judgment will be entered dismissing this  
5 adversary proceeding on the merits without notice or further opportunity for hearing.

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8 Notice and copies sent to:

9 ALL PARTIES VIA BNC.

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